

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF US SPRINT COMMUNICATIONS	)	
COMPANY FOR AN EXEMPTION FROM THE	)	CASE NO. 92-361
REGULATION OF ENHANCED SERVICES	)	

O R D E R

On April 23, 1993, Sprint Communications L.P. ("Sprint") filed a petition pursuant to KRS 278.512 and KRS 278.514 requesting that its enhanced services be exempted from regulation. The Attorney General, by and through his Utility and Rate Intervention Division, requested and was granted full intervention as a party in this proceeding. On May 13, 1993, the Commission issued an Order directing Sprint to provide additional information and Sprint responded on June 18, 1993. No requests for a public hearing were filed and Sprint's petition was submitted for decision based upon the case record.

BACKGROUND

On August 1, 1991, the Commission initiated Administrative Case No. 338<sup>1</sup> to investigate the provision of enhanced services within the state. In its Order the Commission adopted the Federal Communications Commission's ("FCC") definition of "enhanced services" set forth in 47 C.F.R. Sect. 64.702(a). The FCC distinguished enhanced services from basic services by their functional characteristics. Basic telecommunications services are

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<sup>1</sup> Administrative Case No. 338, Inquiry Into The Provision of Enhanced Services in Kentucky, Order dated August 1, 1991.

defined as virtually bare transmission capacity, provided by a common carrier for the movement of information between two points while enhanced services provide more than bare transmission capacity.

The FCC's definition of "enhanced services" refers to three service classes: "services, offered over common carrier transmission facilities that. . . (1) Employ computer processing applications that act on the format, content, code, protocol, or similar aspects of subscriber's transmitted information; (2) Provide the subscriber additional, different, or restructured information; or (3) Involve subscriber interaction with stored information." 47 C.F.R. Sec. 64.702(a).

#### DISCUSSION

In evaluating Sprint's petition for exemption of its enhanced services, the Commission is bound by KRS 278.512 and KRS 278.514. KRS 278.512 provides that the Commission may exempt telecommunications services and products or may reduce regulation if it determines that exemption or alternative regulation is in the public interest. The statute identifies eight criteria to be considered by the Commission when making this determination and permits the Commission to consider any other factors it deems in the public interest.

The first three subsections of KRS 278.512(3) focus on the existing conditions of the market. KRS 278.512(3)(a) requires the Commission to consider the extent to which competing telecommunications services are available in the relevant market.

In its response to the Commission's Order, Sprint identified 79 enhanced service providers offering competing substitutes for its offerings. Sprint noted that it is administratively impossible to identify all enhanced service providers, due to the narrow service offerings of many of the providers. Some of these providers are national corporations, while others are much smaller businesses. Sprint's extensive list indicates the wide variety and size of alternative enhanced service providers.

Under Subsection (3)(b) of KRS 278.512, the Commission must also consider the existing ability and willingness of competitive providers to make functionally equivalent or substitute services readily available. In its response to the Commission's Order, Sprint identified seven generic categories of enhanced services offered by it and its competitors. They include: value added network services which may be provided via dedicated or switched facilities; electronic data interchange and electronic mail and related message services which require PC or host-based software; Gateway and Database services which may reside within or outside of a carrier's network and for which information may be delivered via fax, voice or data. Providers of these types of services typically compete in niche markets. Voice message services may be provided via network-based equipment, customer-provided equipment, or on a resale basis. Access to audiotex services is usually obtained via switched facilities, and providers of these services typically compete in niche markets also. There are two categories of image transmission - video image message

services and facsimile image message service. Access to video image message services is via switched, dedicated facilities including direct satellite access. Facsimile message service can be accomplished using a carrier's network, stand-alone CPE equipment, or a personal computer.

For each category of enhanced service, Sprint identified alternate providers and for some categories it also identified service offerings and substitute services. All of this information indicates the existing ability and willingness of competitive providers to make functionally equivalent or substitute services readily available.

The number and size of competitive providers of services must be considered under KRS 278.512(3)(c). In response to the Commission's Order, Sprint stated that it could not obtain information on the actual number and size of competitive enhanced service providers in Kentucky. However, the information it provided in response to previous questions indicates that there are a number of providers of enhanced services throughout the country. The ubiquity of enhanced services is illustrated by the following quote:

For example, any firm that provides communication software, any firm that produces modems, any firm that operates a database (e.g. Westlaw, Lexis, Dow Jones, or the thousands of 'private' bulletin boards) and any firm that offers an 800 service that prompts users (e.g. 'push 1 for information about X') is an enhanced service provider.<sup>2</sup>

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<sup>2</sup> Sprint's Response to Commission Order dated May 13, 1993, Item No. 1(c).

Subsection (3)(d) of KRS 278.512 requires the Commission to evaluate the overall impact of the proposed regulatory change on the continued availability of existing services at just and reasonable rates. In Sprint's opinion, continuation of the deregulated environment will allow the existing competitive marketplace to discipline the market competitor's price, quality, capabilities, and customer service. Regulation of Sprint's enhanced services by the Commission would restrict Sprint's ability to compete with providers of equivalent and substitute services. In addition, regulation of enhanced services providers would discourage other firms from entering the market, thereby limiting customer choices. These conclusions are consistent with economic market theory.

KRS 278.512(3)(e) requires the Commission to consider the existence of adequate safeguards to assure that rates for regulated services do not subsidize exempted services. Sprint is a non-dominant carrier and does not possess the market power sufficient to sustain rate increases. In Administrative Case No. 273,<sup>3</sup> the Commission designated Sprint a non-dominant carrier, stating that interLATA telecommunications firms seeking initial certification which are without substantial market share and cannot exert monopoly pricing power are non-dominant firms for regulatory

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<sup>3</sup> Administrative Case No. 273, An Inquiry Into Inter- and IntraLATA Intrastate Competition in Toll and Related Services Markets in Kentucky, Order dated May 25, 1984.

purposes.<sup>3</sup> Sprint continues to be a non-dominant carrier; thus this criterion does not appear applicable.

Subsections (3)(f) and (g) require the Commission to consider the impact of proposed regulatory change upon universal availability of basic telecommunications services and upon the need of telecommunications companies to respond to competition, and upon the ability of a regulated utility to compete with unregulated providers of similar services or products, respectively. Enhanced services are not, by definition, basic telecommunications services. Further, Sprint does not provide basic local telephone services in the Commonwealth of Kentucky. Hence, exempting Sprint's enhanced services from regulation would have no impact on universal availability of basic telecommunication service.

Commission regulation of Sprint's enhanced services could hamper Sprint's ability to react quickly to market changes and thereby restrict its ability to compete with providers of equivalent and substitute services. It could also hinder Sprint's ability to compete with non-regulated providers and have a detrimental affect on the market place. As Sprint neither controls bottleneck facilities nor exercises market power in Kentucky's enhanced services market, no purpose would be served by subjecting its enhanced services to these potentially detrimental effects of regulation. After considering the statutory criteria contained in

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<sup>3</sup> Administrative Case No. 273, Order dated May 25, 1984, page 38.

KRS 278.512,<sup>4</sup> the Commission finds that exempting Sprint's enhanced services from the provisions of KRS Chapter 278 is in the public interest.

Exemption of enhanced services does not mean that adequate safeguards do not exist to protect customers from unfair treatment, poor service quality, or excessive prices. Though the market will discipline companies offering enhanced service, customers are encouraged to exercise their option of filing complaints with the company and the Commission.

Although Sprint's investment, revenues, and expenses associated with enhanced services will not be considered by the Commission in approving rates for Sprint's services, the Commission retains jurisdiction over exempted services pursuant to KRS 278.512 and KRS 278.514. Sprint shall continue to fulfill all reporting requirements of KRS Chapter 278 and Commission orders.

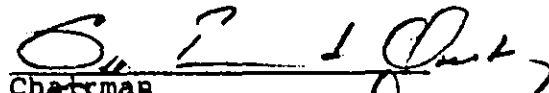
IT IS THEREFORE ORDERED that the enhanced services specifically described in Sprint's petition are exempted from regulation, pursuant to KRS 278.512 and KRS 278.514.

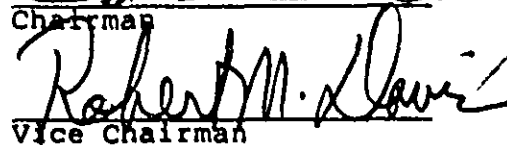
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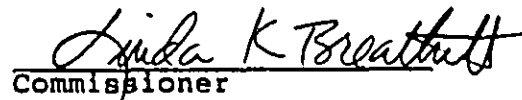
<sup>4</sup> The last of the specific criteria the Commission must consider, Subsection (3)(h), is not applicable to this case, since Sprint is not a small or non-profit carrier.

Done at Frankfort, Kentucky, this 18th day of October, 1993.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director